



Department
of Justice

Ministère
de la Justice

Mr. Gibson

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MEMORANDUM/NOTE DE SERVICE

TO/A: THE PRIME MINISTER

FROM/DE: DEPUTY MINISTER OF JUSTICE

SUBJECT/OBJET: CHARTER OF RIGHTS

Comments/Remarques

-- The purpose of this memorandum is to provide you with a revised discussion draft of the Charter of Rights (dated August 5) with a view to seeking your instructions on a number of key issues relating to its scope and contents. This will enable us to know the position to be taken in our discussions with the provinces between now and the First Ministers Conference in September.

-- This revised discussion draft has been prepared in light of comments that we received from provincial officials on our July 4 draft during the constitutional meetings in July. The provinces had many concerns about that draft, both as to specific wording and as to its scope of coverage. The revised draft attempts to accommodate a number of these concerns but, as indicated below, it by no means meets all of them, particularly in relation to the scope of the Charter.

Set forth below is a commentary on the revised draft raising the principal issues on which your instructions would be appreciated.

1. Limitations on Rights and Freedoms (Section 1)

In the July 4 draft specific circumstances were spelled out in which limitations could be imposed on certain categories of rights. For example, fundamental freedoms and mobility rights could be limited for reasons of national security, public safety, order, health, etc., and certain legal rights in times of national emergency. Although these limitations were more refined than in C-60, they still drew considerable adverse public reaction as being too broad and repressive.

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We raised briefly with the provinces the possible alternative of removing the various limitation clauses and casting the introductory clause in a form that would indicate that the rights and freedoms are not unlimited but subject to the principles of a free and democratic society under the rule of law. The provinces were not generally in favour of this approach, fearing that it would leave even more power to the courts.

It is our present view that such a clause as now provided in section 1 would be sufficient to ensure that the courts would read into the Charter all the long recognized limits on rights. In the United States, the Supreme Court has done this without any such directive in their Bill of Rights, as has the Canadian Supreme Court under our present Bill of Rights. We also feel that the Charter would be more attractive to the public (although perhaps not to provincial governments) without a series of limitation clauses.

If you feel that the proposed section is not sufficient in terms of what it implies, you may wish to consider the following alternative wording for Section 1.

"The Canadian Charter of Rights and Freedoms recognizes the following fundamental rights and freedoms of everyone subject only to such reasonable limits as are generally accepted in a free and democratic society."

This would make it clear that limits exist without seeking to spell them out, but it tends to introduce the Charter in a rather negative fashion.

2. Fundamental Freedoms and Democratic Rights
(Sections 2-5)

There have been only minor drafting changes in these categories of rights except for deletion of the limitation clause relating to fundamental freedoms. The provinces are generally supportive of including both these categories of rights in the Charter and we do not anticipate any problems in maintaining this support, subject to our earlier comments on limitation clauses.

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3. Legal Rights (Sections 6-15)

Substantial changes have been made in the structural presentation of this category of rights, and a number of modifications appear in the wording of specific rights. In addition, the right to a fair hearing for determination of a person's right and obligations has been eliminated along with the limitation clauses.

These changes have been made both to clarify and improve the specification of the legal rights and to meet some of the provincial concerns over the earlier draft. Three principal concerns of the provinces are that:

- (a) including certain rights (e.g., respecting search and seizure, privacy, counsel and self-crimination) could result in Canadian courts adopting undesirable American jurisprudence relating to exclusion of all illegally obtained evidence and non-compellability of witnesses;
- (b) including rights where the law is still in an uncertain state of evolution (e.g., privacy, fair hearings) could lead to court decisions which are unacceptable but unchangeable; and,
- (c) applying rights beyond criminal and penal proceedings to include civil and administrative proceedings would extend legal protections to areas where the provinces feel such protections are not now applicable and, in some cases, would be unwarranted.

On the first point, we share some of the provincial concern, but rather than eliminating the rights in question, we believe that any tendency by Canadian courts to adopt the extreme American rules can be effectively curbed by limiting the range of remedies the courts may invoke for a breach of rights. Consequently, we have proposed amendments to the remedy sections (26 and 27) to achieve that result.

On the second point, we also share the provincial concern to some extent and therefore propose in the draft to delete reference to the right to a fair hearing (outside the criminal and penal area) for determination of one's rights and obligations since the law respecting the "fairness" doctrine is in an

Comments/Remarques:

uncertain state. We have, however, left in the invasion of privacy right on the view that we should make one more effort to convince the provinces that it is too important to be omitted. At the same time, we have enough concern with the uncertainty of its meaning that we would not want to press too strenuously for its inclusion. On a related point, we have continued to include the right of an accused to be tried within a reasonable time although we recognize that rigorous interpretation by the courts could cause serious problems given the delays that continue to persist in criminal trials in some parts of the country.

If any or all of the three legal rights mentioned above (and perhaps other categories to be mentioned later) are to be excluded from the Charter, consideration could be given to a two-tiered approach to protecting rights: a Charter entrenching those rights included in it and a Bill of Rights legislated by Parliament covering those rights not in the Charter. As the latter rights become more clearly defined or accepted, they could be transferred by amendment to the Charter.

On the final point raised by the provinces, we do not share the view that all the legal rights should be confined to criminal and penal matters. Some of them, especially those relating to an accused in Section 11, are so limited by definition. However, we see no reason why a seizure of property in a civil proceeding, a detention under a mental health or child protection law or civil proceeding where a party does not understand the language should not be subject to the legal rights provided. We would thus propose to press the provinces for a broad application of these rights.

As for elimination of the limitation clauses, I refer you back to the comments on Section 1.

4. Mobility Rights (Section 16)

These provisions remain essentially the same as in the July 4 draft, except for the deletion of the general limitation clause and the inclusion in subsection (3) of a possible further qualification on the nature of the discrimination (undue or unreasonable) permitted in laws.

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While a number of provinces appear receptive to including the right to move and take up residence, virtually all are opposed to the right to pursue a livelihood, and particularly to permitting the acquisition and holding of property. In general, they feel that provinces should be free in the areas of economic and social policy to implement policies controlling access to jobs, land and other benefits by non-residents.

Discussions on this category of rights is now connected closely with the subject of "Powers over the Economy" and thus any decisions on possible modification or deletion of the category will have to be assessed in light of any changes in the broader policy issue. It is our intention to retain this category in the new draft for further discussions with the provinces, subject to such decisions as may be taken on the draft respecting "Powers over the Economy".

5. Non-discrimination Rights (Section 17)

This category of rights has posed serious problems from the outset and continues to pose difficulties which may prove insoluble even as the section is redrafted. In this draft we have reverted to the approach of specifying the grounds for non-discrimination rather than leaving to the courts the determination of what constitutes improper grounds of discrimination. While this narrows the scope of judicial power, it does not really meet the concern of the provinces (shared by us) that non-discrimination is a developing area of the law where new grounds are being developed (in federal and provincial human rights legislation) and where certain grounds (sex, age, marital status) still require exceptions or limitations.

These are legitimate concerns which are difficult to meet in a Charter where one cannot begin to spell out all the qualifications. Nevertheless, it will be equally difficult to have a Charter which does not attempt to make some provision for non-discrimination. Consequently, we would propose an approach as suggested in Section 17 where we may be able to find some consensus on a "core" group of accepted grounds. We are not optimistic, however, that even this can be achieved and it may ultimately be necessary to consider omitting this category from the Charter, to continue dealing with it exclusively through legislation as is now the case under the Canadian Human Rights Act and similar provincial laws.

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6. Property Rights (no section)

In the July 4 draft this category provided for the deprivation of property rights only in accordance with law and for reasonable compensation, although it permitted the application of zoning rules and other restrictions on the use of property. Most provinces were strongly opposed to this approach viewing the requirement for reasonable compensation as a matter for legislative determination. We had earlier attempted the approach of "due process of law" without any specific provision for compensation, but this was also rejected by the provinces given its broad interpretation by the U.S. courts. The only other alternative of simply providing for deprivation "in accordance with law" seems inadequate for a Charter since it really guarantees nothing.

In the circumstances, we have tentatively concluded that the better approach may be to drop any reference to property rights and leave these to be dealt with in a legislative Bill of Rights along with other matters not picked up in the Charter.

7. Official Languages (Section 18)

This section has been modified to incorporate the principle of Section 2 of the Official Languages Act giving both languages equal status and rights in all federal institutions. This is a matter on which the Commissioner of Official Languages has been pressing for some years and it was, as you may recall, a subject considered by Cabinet in 1978 in the context of amendments to the Official Languages Act. It is our view that it would be appropriate to incorporate this principle in the Charter, and we are satisfied that it would not (despite the judgment of Chief Justice Deschênes in the Air Canada case) give rise to any unreasonable limits on the authority of the government to designate the language of work for positions in the public service.

As noted in the footnote to this section, New Brunswick officials have indicated that Premier Hatfield may wish to have included a provision declaring French and English to be the official languages of that province.

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8. Language Rights (Sections 19-24)

It should be noted at the outset that during discussions by officials on this part of the Charter, officials from Quebec and Manitoba stated that they were abstaining from the discussions. This was in light of the position taken earlier by their Ministers that there should be no entrenchment of language rights at the provincial level.

(a) Language in Debates and Statutes
(Sections 19 and 20)

No changes have been made in these provisions. Ontario remains opposed for practical reasons to having to print and publish all statutes in both languages. While it is a concession that may not change that province's opposition, it is recommended that the federal delegation be authorized to propose a delay provision of three to five years for Ontario and perhaps Manitoba to implement fully the obligation respecting statutes.

(b) Language in Courts (Section 21)

The only change in this section is the deletion of the provision permitting a witness to give evidence in either language in criminal and serious penal proceedings. This provision gave rise to considerable debate and confusion as to its meaning and scope, particularly as to its inter-relationship with the Criminal Code provisions for an accused to choose the language of trial. Consequently, it was felt that the better course would be to leave this matter to be dealt with by ordinary law and by the provision for an interpreter under "Legal Rights".

A second matter on which direction is required is whether, in order to attempt to bring Ontario aboard on language rights in the courts, the federal delegation should be authorized to propose a delay provision of seven to ten years to that province (and perhaps Manitoba as well) for the full implementation of its obligations. As with

statutes, so with courts, Ontario is strongly resistant to being placed on the same footing as Quebec, Manitoba and New Brunswick. It believes that as a practical matter it cannot provide court services in both languages for many years to come.

(c) Language in Services to Public (Section 22)

The only real change here is a drafting one with respect to provincial services to the public, to make it clear that it is up to the provincial legislature to determine the extent of the services. Most provinces were opposed to the earlier draft, believing it imposed a legal obligation to act.

Again, in this section New Brunswick's representative indicated that Premier Hatfield may wish to have included a provision which assures to the public of that province the right to have government services in either language.

(d) Minority Language Education (Section 24)

This section is the same as that in the July 4 draft. Both we and officials of the provinces continue to have a number of problems with the approach taken in the draft, and given the fundamental importance of this subject, we will be sending you a separate memorandum on it shortly, presenting some alternative approaches for your consideration.

9. Enforcement of Charter (Sections 26 and 27)

These provisions have been modified somewhat both to overcome some of the problems noted under "Legal Rights" and to provide greater clarity as to the purposes of the two sections. Section 26 as now drafted is clearly directed to invalidating any law or subsidiary instrument that is found to conflict with any right declared by the Charter. Striking down a law, however, may not be sufficient remedy for a person whose rights have been infringed, and there may be cases where no legal recourse exists. In such instances, Section 27 would enable the victim to seek specific forms of relief from a court.

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The remedies are considerably narrower than in the earlier draft, but we believe they are sufficiently broad to be effective, while at the same time assuring the provinces that the courts will not have unlimited powers under an entrenched Charter.

10. General

A number of sections of the new draft have not been mentioned. This is because they have not been significantly changed from the July 4 draft and because they do not raise issues on which we feel your instructions are required at this time.

There remains, however, one further important issue which is not raised by the draft, but which will likely be discussed further at the federal-provincial meetings later this month. One of the matters referred by Ministers to the committee of officials was the possibility of including a "notwithstanding" clause in the Charter thereby permitting a legislative body to enact a law overriding one or more rights by an express provision in the enactment to that effect. This approach, you may recall, was considered in some detail during the 1978-79 negotiations, but most provinces finally had considerable doubts about its political acceptability. It is, however, an approach that could alleviate to some extent provincial concerns about the rigidity of the Charter in the face of "bad" court decisions. On the other hand, it is a provision that could seriously undermine the efficacy of the Charter if it were invoked too frequently.

On the basis of preliminary discussions with provincial officials, it would appear that a "notwithstanding" clause has some appeal to the provinces. We, however, continue to have considerable reservations about its desirability and, indeed, its necessity, particularly if the legal rights are more clearly defined. Thus we propose at this point to continue to press for a Charter without a "notwithstanding" clause, while at the same time not foreclosing the possibility of a decision being taken at an appropriate time to include such a provision if this would bring a substantial number of provinces into the Charter.

11. Summary

Subject to your comments and instructions, we would propose to deal with the principal issues respecting the Charter as follows:

- (a) To pursue with the provinces the possibility of removing the various limitation clauses in the Charter by inserting a revised introductory section that would implicitly or explicitly indicate that rights are not without reasonable limits.
- (b) To discuss with the provinces the category of "Legal Rights" as set forth in the revised draft, dealing in particular with question of retaining or deleting the rights to a fair hearing, to protection against arbitrary invasion of privacy and to a trial within a reasonable time. We would also press for a broad application of the legal rights.
- (c) To continue to press the provinces for inclusion of "Mobility Rights" in the context of the package relating to "Powers over the Economy".
- (d) To continue to press the provinces, at this time, for inclusion of "Non-discrimination Rights" as set forth in the revised draft.
- (e) To propose to the provinces that "Property Rights" be deleted from the Charter provisions.
- (f) To incorporate in the Charter the principles of section 2 of the Official Languages Act and to include equivalent provisions for New Brunswick if that province so desires.
- (g) To offer to Ontario (and probably to Manitoba) specific delays (three to five years for statutes and seven to ten years for courts) in implementing language obligations in those provinces.
- (h) To omit the provision assuring to witnesses in criminal and penal proceedings the right to give evidence in English or French, as they may choose, leaving this matter to be covered by the right to an interpreter under "Legal Rights".

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Comments/Remarques:

- (i) To continue to indicate to the provinces the undesirability of including a "notwithstanding" clause, while at the same time not foreclosing the possibility of a later decision to accept such a clause.

If it were possible for you to let us have your comments and instructions on these matters by Friday, this would enable us to discuss a revised draft of the Charter with provincial officials during meetings scheduled for Toronto next Monday and Tuesday, August 11 and 12.

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Roger Tassé

Atts. (2) -

DISCUSSION DRAFT

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Canadian
Charter of
Rights and
Freedoms

1. The Canadian Charter of Rights and Freedoms recognizes the following fundamental rights and freedoms of everyone consistent with the principles of a free and democratic society under the rule of law.

Fundamental Freedoms

Fundamental
freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion, and expression, including freedom of the press and other media; and
- (c) freedom of peaceful assembly and of association.

Democratic Rights

Democratic
rights of
citizens

3. Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Duration of
elected
legislative
bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date of the return of the writs for the choosing of its members.

Continuation
in special
circum-
stances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond the period of five years, if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual
sitting of
legislative
bodies

5. There shall be a sitting of Parliament and of each legislature at least once in every year and not more than twelve months shall intervene between sittings.

Legal Rights

Life, liberty
and security
of person

6. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except by due process of law.

Search and
seizure

7. Everyone has the right to be secure against unreasonable search and seizure.

Detention or
imprisonment

8. Everyone has the right not to be arbitrarily detained or imprisoned.

Invasion
of privacy

9. Everyone has the right to be secure against arbitrary invasion of privacy.

Arrest or
detention

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons;
- (b) to retain and instruct counsel without delay; and
- (c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

Proceedings
against
accused in
criminal and
penal matters

11. Everyone accused of an offence has the right

- (a) to be informed promptly of the specific offence;
- (b) to be tried within a reasonable time;
- (c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (d) not to be denied reasonable bail without just cause;
- (e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence,
- (f) not to be tried or punished more than once for an offence of which the person has been finally convicted or acquitted; and
- (g) to the benefit of the lesser punishment where the punishment for an offence of which the person has been convicted has been varied between the time of commission and the time of sentencing.

Treatment or
punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-
crimination

13. A witness has the right when compelled to testify not to have any evidence so given used against him or her in any subsequent proceedings, except a prosecution for perjury or the giving of contradictory evidence.

Counsel

14. A witness has the right not to be compelled to testify if denied counsel.

Interpreter

15. A party or witness has the right to assistance of an interpreter if that person does not understand or speak the language in which the proceedings are conducted.

Mobility Rights

Rights of
citizens

16. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights of
citizens and
permanent
residents

(2) Every citizen of Canada and every person who has the status of a permanent resident has the right

(a) to move to and take up residence in any province; and

(b) to acquire and hold property in, and to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to any laws, rules or practices of general application in force in a province other than those that discriminate (unduly or unreasonably?) among persons primarily on the basis of province of present or previous residence or domicile.

Non-discrimination Rights

Equality
before the
law and
equal
protection
of the law

17. (1) Everyone has the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.

Affirmative
action
programmes

(2) Nothing in this section precludes any programme or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

Official Languages

Official
languages
of Canada

18. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada. (*)

Status of
languages
and
extension
thereof

(2) In addition, English and French have the status set forth in this Charter, and nothing therein limits the authority of Parliament or a legislature to extend the status or use of the two languages.

Language Rights

Proceedings
of Parliament

19. (1) Everyone has the right to use English or French in any of the debates or other proceedings of Parliament.

Debates of
legislatures

(2) Everyone has the right to use English or French in the debates of the legislature of any province.

Statutes, etc.
of Parliament

20. (1) The statutes and the records and journals of Parliament shall be printed and published in English and French.

Statutes, etc.
of certain
legislatures

(2) The statutes and the records and journals of the legislatures of Ontario, Quebec, New Brunswick and Manitoba shall be printed and published in English and French.

(* New Brunswick may wish special provision added respecting status of English and French in that province.)

Idem

(3) The statutes and the records and journals of the legislature of each province not referred to in subsection (2) shall be printed and published in English and French to the greatest extent practicable accordingly as the legislature of the province prescribes.

Both versions of statutes authoritative

(4) Where the statutes of any legislative body described in any of subsections (1) to (3) are printed and published in English and French, both language versions are equally authoritative.

Proceedings in Supreme Court and courts constituted by Parliament

21. (1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court constituted by Parliament.

Proceedings in courts of certain provinces

(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of Ontario, Quebec, New Brunswick and Manitoba.

Idem

(3) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of a province not referred to in subsection (2), to the greatest extent practicable accordingly as the legislature prescribes.

Rules for orderly implementation and adaption

(4) Nothing in this section precludes the application of such rules as may be prescribed for the orderly implementation and operation of this section.

Communications
by public
with govern-
ment of
Canada

22. (1) Any member of the public in Canada has the right to communicate with and to receive services from any head or central office of an institution of government of Canada in English or French, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

Communications
by public
with govern-
ment of a
province

(2) Any member of the public in a province has the right to communicate with and to receive services from any head, central or principal office of an institution of government of the province in English or French to the greatest extent practicable accordingly as the legislature prescribes. (*)

Rights and
privileges
preserved

23. Nothing in sections 18 to 22 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Charter with respect to any language that is not English or French.

(* New Brunswick may wish special provision added respecting language of services to the public.)

Language of
educational
instruction

24. (1) Citizens of Canada in a province who are members of an English-speaking or French-speaking minority population of that province have a right to have their children receive their education in their minority language at the primary and secondary school level wherever the number of children of such citizens resident in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Provisions
for deter-
mining where
numbers
warrant

(2) In each province, the legislature may, consistent with the right provided in subsection (1), enact provisions for determining whether the number of children of citizens of Canada who are members of an English-speaking or French-speaking minority population in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Undeclared Rights

Undeclared
rights and
freedoms

25. The enumeration in this Charter of certain rights and freedoms shall not be construed to exclude, or to derogate from, any other fundamental rights or freedoms that may exist in Canada, including any rights or freedoms that may pertain to the native peoples of Canada.

General

Laws, etc.
not to apply
so as to
abrogate
declared
rights and
freedoms

26. Any law, order, regulation or rule that authorizes, forbids or regulates any activity or conduct in a manner inconsistent with this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

Enforcement
of declared
rights and
freedoms

27. Where no other legal recourse or remedy is available, anyone whose rights or freedoms as declared by this Charter have been infringed or denied to his or her detriment has the right to apply to a court of competent jurisdiction to obtain relief or remedy by way of declaration, injunction, damages or penalty as may be appropriate and just in the circumstances.

Application
to territories
and territorial
institutions

28. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory or the Northwest Territories or to the Council or Commissioner in Council thereof, as the case may be.

Legislative
authority
not
extended

29. Nothing in this Charter confers any legislative authority on any body or authority except as expressly provided by this Charter.

Continuation
of existing
constitutional
provisions

30. Nothing in sections 19 to 21 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. (*)

Application
of sections
20 and 21

31. A legislature of a province to which subsections 20(2) and 21(2) do not expressly apply may declare that one or both of these subsections shall have application, and thereafter any such provision shall apply to that province in the same terms as to any province expressly named therein.

(* Transitional provisions will be required for repeal of these provisions at an appropriate time.)

July 4, 1980

DISCUSSION DRAFTRIGHTS AND FREEDOMS WITHIN THE CANADIAN
FEDERATIONTitleCanadian
Charter of
Rights and
Freedoms

1. This section and sections 2 to 23 may be
cited as the Canadian Charter of Rights and Freedoms.

Fundamental FreedomsFundamental
Freedoms

2. (1) Everyone has the following fundamental
freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, opinion and expression,

including freedom in the dissemination of news,

opinion and belief; and

(c) freedom of peaceful assembly and of

association.

Justifiable
Limitations

(2) The manifestation or exercise of the freedoms
declared by this section may be made subject only to
such limitations prescribed by law as are reasonably
justifiable in a free and democratic society in the
interests of national security, public safety, order,
health or morals or the rights and freedoms of others.

Democratic RightsDemocratic
Rights of
Citizens

3. Consistent with the principles of free and
democratic elections to the House of Commons and to
the legislative assemblies, and of universal suffrage
for that purpose, every citizen of Canada shall, without
unreasonable distinction or limitation, have the right
to vote in an election of members of the House of Commons
or of a legislative assembly and to be qualified for
membership therein.

Duration of
elected
legislative
bodies

4. (1) No House of Commons and no legislative assembly of a province shall continue for longer than five years from the date of the return of the writs for the choosing of its members.

Continuation
in special
circumstances

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly of a province may be continued by the legislature thereof beyond the time limited therefor by subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual
sitting
of elected
legislative
bodies

5. There shall be a sitting of Parliament and of each legislature at least once in every year and not more than twelve months shall intervene between sittings.

Legal Rights

Legal
rights

6. (1) Everyone has the right to life, liberty and security of his or her person and the right not to be deprived thereof except by due process of law, which process encompasses the following:

- (a) the right to be secure against unreasonable searches and seizures;
- (b) the right to protection against arbitrary or unlawful interference with privacy;
- (c) the right not to be detained or imprisoned except on grounds provided by law and in accordance with prescribed procedures;
- (d) the right on arrest or detention
 - (i) to be informed promptly of the reason for the arrest or detention,
 - (ii) to be provided with the opportunity to retain and consult counsel without delay, and

(iii) to the remedy by way of habeas corpus

(2) for the determination of the validity of his

or her detention and for release if the detention

is not lawful;

(e) the right of a person charged with an offence

(i) to be informed of the specific charge,

(ii) to be tried within a reasonable time,

(iii) to be presumed innocent until proven guilty

in a fair and public hearing by an independent

and impartial tribunal,

(iv) not to be denied reasonable bail without

just cause having been established, and

(v) not to be found guilty on account of any act

or omission that at the time of the act or

omission did not constitute an offence;

(f) the right not to be tried or punished more than

once for an offence of which he or she has been

finally convicted or acquitted;

(g) the right to the benefit of the lesser

punishment where the punishment for an offence of

which he or she has been convicted has been varied

between the time of commission and the time of

sentencing;

(h) the right not to be subjected to any cruel and

unusual treatment or punishment;

(i) the right, when compelled to give evidence

before any court, tribunal, commission, board or

other authority, to counsel, to protection against

self-crimination and to any other constitutional

safeguard;

(j) the right to the assistance of an interpreter

in any proceedings before a court, tribunal,

commission, board or other authority, if the party

or witness does not understand or speak the language

in which the proceedings are conducted.

(2) Everyone has the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his or her rights or obligations.

(3) In time of serious public emergency threatening the life of the country, the existence of which is officially proclaimed by or pursuant to a law enacted to deal with such circumstances or by a law specifically referring to this subsection, the rights mentioned in this section other than the right to life and those mentioned in subparagraphs (1)(d)(i) and (ii) and (1)(e)(i)-(iii) and (v) and paragraphs (1)(f)(g)(h)(i) and (j) may be derogated from to the extent strictly required by the circumstances of the emergency.

Idem

(4) Nothing in this section precludes the enactment of or renders invalid a law that authorizes the holding of all or part of a proceeding in camera in the interests of national security, public order or morality or in the interest of the protection of privacy of one or more of the parties or where publicity would prejudice the public interest.

Non-discrimination Rights

Equality
before the
law and equal
protection
of the law

7. (1) Everyone has the right to equality before the law and to equal protection of the law without distinction or restriction other than any distinction or restriction provided by law that is fair and reasonable having regard to the object of the law.

Affirmative
action
programmes

(2) Nothing in this section precludes any programme or activity authorized by or pursuant to law that has as its object the amelioration of conditions of disadvantaged persons or groups.

Mobility Rights

Rights of
citizens

8. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights of
citizens and
persons
lawfully
admitted for
permanent
residence

(2) Every citizen of Canada and every person who has been lawfully admitted to Canada for permanent residence and has not lost the status of a permanent resident has the right

(a) to move to and take up residence in any province or territory, and

(b) to acquire and hold property in, and to pursue the gaining of a livelihood in, any province or territory,

subject to any laws of general application in force in that province or territory other than any such laws that discriminate among persons to whom this provision applies primarily on the basis of province or territory of present or previous residence or domicile.

Justifiable
limitations

(3) The rights declared by this section may be made subject only to such limitations prescribed by law as are reasonably justifiable in a free and democratic society in the interests of national security, public safety, order, health or morals.

Property Rights

Property
rights

9. (1) Everyone has the right to the use and enjoyment of property, individually or in association with others, and the right not to be deprived thereof except in accordance with law and for reasonable compensation.

Justifiable
limitations

(2) Nothing in this section precludes the enactment of or renders invalid laws controlling or restricting the use of property in the public interest or securing against property the payment of taxes or duties or other levies or penalties.

(3) The rights declared by this section may be made subject only to such limitations prescribed by law in addition to those referred to in subsection (2) as are reasonably justifiable in a free and democratic society in the interests of national security or public safety, order, health or morals.

Official Languages

10. (1) English and French are the official languages of Canada, having the status and protection set forth in this Charter.

(2) Nothing in this Charter limits the authority of Parliament or of the legislature of a province to extend the status, protection or use of the English and French languages.

Language Rights

11. (1) Everyone has the right to use English or French in any of the debates or other proceedings of Parliament.

(2) Everyone has the right to use English or French in the debates of the legislative assembly of any province.

12. (1) The statutes and the records and journals of Parliament shall be printed and published in English and French.

(2) The statutes and the records and journals of the legislatures of Ontario, Quebec, New Brunswick and Manitoba shall be printed and published in English and French.

(3) The statutes and the records and journals of the legislature of each province not referred to in subsection (2) shall be printed and published in English and French to the greatest extent practicable accordingly as the legislature of the province prescribes.

both versions
of statutes
authoritative

(4) Where the statutes of any legislative body described in any of subsections (1) to (3) are printed and published in English and French, both language versions are equally authoritative.

proceedings in
Supreme Court
and courts
constituted
by Parliament

13. (1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court constituted by Parliament.

proceedings in
courts of
certain
provinces

(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of Ontario, Quebec, New Brunswick and Manitoba.

dem

(3) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of a province not referred to in subsection (2), to the greatest extent practicable accordingly as the legislature of the province prescribes.

proceedings
in relation
to certain
offences

(4) In proceedings in any court in Canada relating to an offence

(a) created by or pursuant to an Act of Parliament, or

(b) created by or pursuant to an Act of the legislature

of a province if the punishment for the offence may

be imprisonment,

any person giving evidence before the court has the

right to be heard in English or French, through the

services of an interpreter where necessary, and the

right not to be placed at a disadvantage in so being

heard.

rules for
orderly
implementation
and operation

(5) Nothing in this section precludes the application of such rules as may be prescribed by any competent body or authority for the orderly implementation and operation of this section.

Communication
by public
with govern-
ment of Canada

14. (1) Any member of the public in Canada has the right to communicate with and to receive services from any head or central office of an institution of government of Canada in English or French, and has the same right with respect to any other principal office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

Communication
by public with
government of
a province

(2) Any member of the public in a province has the right to communicate with and to receive services from any head, central or other principal office of an institution of government of the province in English or French to the extent to which and in the areas of the province in which it is determined, in such manner as may be prescribed or authorized by the legislature of the province, that the right should pertain having regard to the practicability and necessity of providing such services.

Rights and
privileges
preserved

15. Nothing in sections 10 to 14 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Charter with respect to any language that is not English or French.

Language of
educational
instruction

16. (1) Citizens of Canada in a province who are members of an English-speaking or French-speaking minority population of that province have a right to have their children receive their education in their minority language at the primary and secondary school level wherever the number of children of such citizens resident in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

provisions
or determining
here numbers
arrant

(2) In each province, the legislature may, consistent with the right provided in subsection (1), enact provisions for determining whether the number of children of citizens of Canada who are members of an English-speaking or French-speaking minority population in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Undeclared Rights

ndeclared
ights and
reedoms

17. Nothing in this Charter abrogates or derogates from any right or freedom not declared by it that may exist in Canada, including any right or freedom that may pertain to the native peoples of Canada.

General

aws, etc.,
not to apply
so as to
abrogate
declared
ights and
reedoms

18. To the end that the-paramountcy of this Charter be recognized and that full effect be given to the rights and freedoms herein declared, any law and any administrative act that is inconsistent with any provision of the Charter is, except as specifically otherwise provided in or as authorized by this Charter, inoperative and of no force or effect to the extent of the inconsistency.

inforcement
of declared
rights and
freedoms

19. Where no other effective recourse or remedy is available or provided for by law, anyone whose rights or freedoms as declared by this Charter have been infringed or denied to his or her detriment has the right to apply to a court of competent jurisdiction to obtain such relief or remedy as the court deems appropriate and just in the circumstances.

Application to
territories
and territorial
institutions

20. A reference in any of sections 3 to 5 and 10 to 16 to a province or to the legislative assembly or legislature of a province includes a reference to the Yukon Territory or the Northwest Territories or to the Council or Commissioner in Council thereof, as the case may be.

Legislative
authority
not extended

21. Nothing in this Charter confers any legislative authority on any competent body or authority except as expressly provided by this Charter.

22. Nothing in sections 11 to 13 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. (1)

23. A legislature of a province may, by resolution, declare that any part of sections 12 and 13 that do not expressly apply to that province shall have application, and thereafter such parts or parts shall apply to that province in the same terms as to any province expressly named therein.

NOTE: (1) This provision has application until such time as specific provisions in the present Constitution may be repealed.